REMARKS

By this Amendment, Applicants amend the specification to include more accurate descriptions. Applicants amend claims 1 and 4-8 to more appropriately define the present invention, and cancel claims 17-24 without prejudice or disclaimer of the subject matter thereof. Claims 1-16 remain currently pending.

In the Office Action, the Examiner objected to the specification as failing to provide proper antecedent basis; objected to claim 1 as containing informalities; rejected claims 1, 4, 9, and 12 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication No. 2002/0138643 to Shin et al. ("Shin") in view of U.S. Patent No. 7,124,438 to Judge et al. ("Judge"); rejected claims 2-6, 8, 10-14, and 16 under 35 U.S.C. § 103(a) as being unpatentable over Shin in view of Judge and U.S. Patent No. 6,986,139 to Kubo ("Kubo"); rejected claims 7 and 15 under 35 U.S.C. § 103(a) as being unpatentable over Shin in view of Judge and Kudo, and further in view of U.S. Patent No. 7,107,619 to Silverman ("Silverman"); and rejected claims 17-24 under 35 U.S.C. § 103(a) as being unpatentable over Shin in view of Kubo.[1]

Regarding the objection to the specification

Applicants respectfully traverse the Examiner's objection to the specification. However, to expedite the prosecution of this application, Applicants have amended the specification to provide more proper antecedent basis for "request measurement unit," "response measurement unit," and "server load calculation unit," and also amended claims 4-8 not to recite "load state storage unit," "response amount measurement unit,"

[1] The Office Action contains a number of statements reflecting characterizations of the related art and the claims. Regardless of whether any such statement is identified herein, Applicants decline to automatically subscribe to any statement or characterization in the Office Action.

"re-response detection unit," communication state detection unit," and "connection detection unit." Accordingly, Applicants respectfully request withdrawal the objection to the specification.

Regarding the claim objection

Applicants respectfully traverse the Examiner's objection to claim 1 as containing informalities. However, to expedite the prosecution of this application, Applicants have amended claim 1 to recite "said request measurement unit" instead of "said first measurement unit," and to recite "said response measurement unit" instead of "said second measurement unit," as suggested by the Examiner. Accordingly, Applicants respectfully request withdrawal of the objection to claim 1.

Regarding the rejection under 35 U.S.C. § 103

Applicants respectfully traverse the Examiner's claims 1, 4, 9, and 12 under 35 U.S.C. § 103(a) as being unpatentable over Shin in view of Judge, because a *prima facie* case of obviousness has not been established.

In order to establish a *prima facie* case of obviousness under 35 U.S.C. § 103, three basic criteria must be met. First, the prior art reference (or references when combined) must teach or suggest all the claim elements. Second, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify a reference or to combine reference teachings. Third, there must be a reasonable expectation of success. See M.P.E.P. § 2143.

Independent claim 1, as amended, recites a combination including, for example, "a response measurement unit configured to measure a number of responses which

have been made from said server computer to said client computers within the predetermined time period; [and] at least one server load calculation unit configured to obtain a load state of said server computer by using measurements of said request measurement unit and said response measurement unit." Shin fails to teach or suggest at least these features of amended claim 1.

The Examiner alleges that Shin discloses "a response measurement unit (see Fig. 1, monitor) configured to measure a number of responses (see pg. 4, ¶ [0067], 'accesses server capacity based on its observations'), which have been made from said server computer to said client computers (see pg. 4, ¶ [0096])." (Office Action at 4.) Applicants respectfully disagree.

In the cited paragraph, Shin explicitly states that "[t]he monitoring module itself assesses server capacity based on its observations of different load indicators. Accounting for both the importance of all load indicators and the system capacity, the monitor computes the server load-index." Shin, para. [067], emphasis added. However, Shin's mere mention of load indicators, as to an overload condition, and system capacity does not constitute "a response measurement unit configured to measure a number of responses which have been made from said server computer to said client computers within the predetermined time period," as recited in amended claim 1 (emphasis added). In fact, Shin is silent with respect to response from a server to a client "because one is ultimately interested in controlling the influx of requests." Shin, para. [0094].

The Examiner also alleges that Shin discloses "at least one server load calculation unit (see Fig. 1, monitor & Load Controller) configured to obtain a load state

(see pg. 6, ¶ [0097-0101], load index) of said server computer by using measurements of said first measurement unit and said second measurement unit (see pg. 5, ¶ [0078], 'acceptance rates')." (Office Action at 4.) Applicants respectfully disagree.

In the cited paragraph, Shin explicitly states that "[t]he monitor uses overload and underload thresholds in conjunction with the specified weights to compute the amalgamated server load index." Shin, para. [0097], emphasis added. However, Shin's mere mention of overload and underload thresholds does not constitute "at least one server load calculation unit configured to obtain a load state of said server computer by using measurements of said request measurement unit and said response measurement unit," as recited in amended claim 1 (emphasis added).

Judge fails to cure the deficiencies of Shin. The Examiner alleges that "Judge reference teaches a measurement unit configured to collect measurements within a predetermined time period." (Office Action at 4.) Even assuming the Examiner's allegation is true, which Applicants do not concede, Judge fails to teach or suggest at least "a response measurement unit configured to measure a number of responses which have been made from said server computer to said client computers within the predetermined time period; [and] at least one server load calculation unit configured to obtain a load state of said server computer by using measurements of said request measurement unit and said response measurement unit," as recited in amended claim 1 (emphasis added).

Therefore, neither Shin nor Judge, taken alone or in any reasonable combination, teaches or suggests all elements of amended claim 1. A *prima facie* case of obviousness has not been established. Accordingly, Applicants respectfully request

withdrawal of the Section 103(a) rejection of amended claim 1. Because claim 4 depends from claim 1, Applicants also request withdrawal of the Section 103(a) rejection of claim 4 for at least the same reasons stated above.

Further, independent claim 9, while of different scope, includes similar recitations to those of amended claim 1. Claim 9 is therefore also allowable for at least the same reasons stated above with respect to claim 1. Applicants respectfully request withdrawal of the Section 103(a) rejection of claim 9 and also claim 12, which depends from claim 9.

Applicants respectfully traverse the Examiner's claims 2-6, 8, 10-14, and 16 under 35 U.S.C. § 103(a) as being unpatentable over Shin in view of Judge and Kubo, because a *prima facie* case of obviousness has not been established.

Claims 2-6 and 8 depend from claim 1 and claims 10-14 and 16 depend from claim 9, either directly or indirectly. As set forth above, Shin and Judge fail to teach or suggest at least "a response measurement unit configured to measure a number of responses which have been made from said server computer to said client computers within the predetermined time period; [and] at least one server load calculation unit configured to obtain a load state of said server computer by using measurements of said request measurement unit and said response measurement unit," as recited in amended claim 1, and "measuring a number of responses which have been made from said server computer to said client computers within the predetermined time period; [and] obtaining a load state of said server computer by using the number of the data requests and the number of the responses," as recited in claim 9 (emphasis added).

Kubo fails to cure the deficiencies of Shin and Judge. Kubo teaches "[a] dynamic load balancing method allowing a transaction processing load is balanced among computers by using estimated elongation rates." Kubo, abstract. "The elongation rate of processing time in each computer is estimated based on measured load data obtained by measuring, at a certain time cycle, the number of in-process transactions and the number of job processing processes staying in the CPU system, or, the number of in-process transactions and the CPU utilization." Kubo, column 4, lines 62-67, emphasis added. However, Kubo fails to teach or suggest at least the claim elements listed above.

Therefore, none of Shin, Judge, and Kubo, taken alone or in any reasonable combination, teaches or suggests all elements as required by claims 2-6, 8, 10-14, and 16. A *prima facie* case of obviousness has not been established. Accordingly, Applicants respectfully request withdrawal of the Section 103(a) rejection of claims 2-6, 8, 10-14, and 16.

Applicants respectfully traverse the Examiner's rejection of claims 7 and 15 under 35 U.S.C. § 103(a) as being unpatentable over Shin in view of Judge and Kubo, and further in view of Silverman, because a *prima facie* case of obviousness has not been established.

Claim 7 indirectly depends from claim 1 and claim 15 indirectly depends from claim 9. As set forth above, Shin, Judge, and Kubo fail to teach or suggest at least "a response measurement unit configured to measure a number of responses which have been made from said server computer to said client computers within the predetermined time period; [and] at least one server load calculation unit configured to obtain a load

state of said server computer by using measurements of said request measurement unit and said response measurement unit," as recited in amended claim 1, and "measuring a number of responses which have been made from said server computer to said client computers within the predetermined time period; [and] obtaining a load state of said server computer by using the number of the data requests and the number of the responses," as recited in claim 9 (emphasis added).

Silverman fails to cure the deficiencies of Shin, Judge, and Kubo. The Examiner alleges that the "Silverman reference teaches: a communication state detection unit configured to detect if said client computer has been forcibly cut off and to detect if any abnormality in a communication state exists (see col. 12, lines 22-29, 'number of incorrect responses')." (Office Action at 9.) Applicants respectfully disagree. However, even assuming that the Examiner's allegation is true, which Applicants do not concede, Silverman fails to teach or suggest at least the above listed claim elements as recited in claim 1 and claim 9, and required by claim 7 and claim 15, respectively.

Therefore, none of Shin, Judge, Kubo, and Silverman, taken alone or in any reasonable combination, teaches or suggests all elements as required by claims 7 and 15. A *prima facie* case of obviousness has not been established. Accordingly, Applicants respectfully request withdrawal of the Section 103(a) rejection of claims 7 and 15.

Applicants respectfully traverse the Examiner's claims 17-24 under 35 U.S.C. § 103(a) as being unpatentable over Shin in view of Kubo. However, because claims 17-24 have been canceled, the rejection of claims 17-24 is moot.

Conclusion

In view of the foregoing amendments and remarks, Applicants respectfully request reconsideration and reexamination of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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